

REC'D TH  
REGULATORY AUTH.  
**BEFORE THE TENNESSEE REGULATORY AUTHORITY**

**NASHVILLE, TENNESSEE**

'02 FEB 20 PM 2 28

**IN RE:**

**SHOW CAUSE PROCEEDING  
AGAINST TALK.COM, INC.**

)  
)  
)  
)  
)

OFFICE OF THE  
EXECUTIVE SECRETARY

**DOCKET NO.  
01-00216**

---

**THE CONSUMER SERVICES DIVISION'S  
MOTION FOR EXTENSION OF TIME**

---

Pursuant to Tenn. Comp. R. & Reg. 1220-1-2-.06(2), the Consumer Services Division ("CSD") of the Tennessee Regulatory Authority ("Authority" or "TRA"), by and through the undersigned counsel, hereby requests an extension of time to respond to Talk.com's Motion to Dismiss.

On February 19, Talk.com filed a twenty-three (23) page Motion to Dismiss this action on the ground of lack of subject matter jurisdiction. On the same day, Talk.com filed, pursuant to an order of the Pre-Hearing Officer, its response to the *Order Requiring Talk.com to Appear and Show Cause Why A Cease and Desist Order and/or Fine Should Not Be Imposed* (hereinafter Show Cause Order) and a Motion to Compel. The response to the Show Cause Order is eighty-one (81) pages long.

Tenn. Comp. R. & Reg. 1220-1-2-.06(2) states that responses to preliminary motions shall be filed within seven (7) days of service. The Regulation contemplates, however, that this time limit will be applied flexibly, allowing the Authority or Hearing Officer to "extend the time for responding to any motion."

The CSD requests an additional ten (10) days to respond to the Motion to Dismiss. Due to a lack of resources, the CSD is unable to absorb the three (3) filings of

February 19<sup>th</sup> and respond to the Motion to Dismiss by February 26<sup>th</sup>.<sup>1</sup> The Motion to Dismiss raises serious legal issues requiring extensive research and consideration. Talk.com has had since November 8, 2001, the date the Show Cause Order was filed, to prepare this Motion. Absent additional time, the CSD will be unable to prepare the thoughtful, well-researched response this agency deserves. Accordingly, the CSD

---


<sup>1</sup> On February 11, 2002, after both an informal meeting and a status conference in this case, the Pre-Hearing Officer issued the *Order Supplementing Procedural Schedule*, in which, for the first time and without discussion or agreement of the parties, a rule never before imposed in Show Cause Proceedings before this agency was decreed. The Pre-Hearing Officer imposed this rule via the following sentence which concluded the February 11 *Order*: "Extensions of time exceeding a cumulative total of ten (10) days shall not be granted." It should be noted that none of the parties to this litigation has a history of foot dragging or seeking repeated extensions of time which might warrant the *sua sponte* imposition of such a rule.

During the various meetings with the parties on this matter, the Pre-Hearing Officer has repeatedly indicated his preference that the parties cooperate and work out their discovery disputes. To that end and in that spirit, the CSD agreed to Talk.com's suggestion that the procedural schedule be amended to allow additional time to negotiate discovery matters. The CSD did not initiate any discussions about extensions of time, but was attempting to act in the spirit of cooperation encouraged by the Pre-Hearing Officer. The Pre-Hearing Officer agreed to modify the procedural schedule during a teleconference with opposing parties; however, he did not mention any negative consequences to this action. The February 14, 2002 *Order Granting Joint Motion to Amend Procedural Schedule* concluded with the following statement: "Extensions of time exceeding a total of three (3) days shall not be granted." Without warning, the Pre-Hearing Officer had docked both parties seven (7) days for attempting to work out their discovery disputes in compliance with previous instructions.

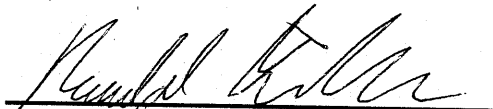
To encourage cooperation between the parties, authorize an extension for that reason and then impose negative consequences for doing so is unfair. Had counsel for CSD known that their efforts to cooperate with opposing counsel would result in consequences unfavorable to their client, they would never have agreed to participate in the motion to amend the procedural schedule. Counsel for CSD is concerned that the imposition and application of the Pre-Hearing Officer's arbitrary ten (10) day rule has statutory (Tenn. Code Ann. § 4-5-322(b)(4)) and due process implications detrimental to their client.

respectfully requests that the Pre-Hearing Officer grant the CSD an extension of time until March 8, 2002 in which to respond to Talk.com's Motion to Dismiss.

Respectfully submitted,



Lynn Questell  
Counsel



Randall Gilliam  
Counsel

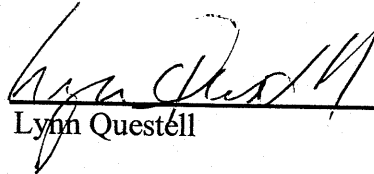
Tennessee Regulatory Authority  
460 James Robertson Parkway  
Nashville, Tennessee 37243-0505  
(615) 741-2904 (ext. 198)

## CERTIFICATE OF SERVICE

I, Lynn Questell, hereby certify that I have served a copy of the foregoing Motion for Extension of Time on the following persons by hand delivery or by depositing a copy of the same in the United States Mail, postage prepaid, addressed to them at the addresses shown below, this 20<sup>th</sup> day of February, 2002:

Henry Walker  
Boult, Cummings, Conners & Berry PLC  
414 Union Street, Suite 1600  
Nashville, TN 37219-8062

Tim Phillips  
Shilina B. Chatterjee  
Office of the Attorney General  
Consumer Advocate and Protection Division  
P.O. Box 20207  
Nashville, TN 37202

  
Lynn Questell